Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337

COMMENTS OF OREGON PUBLIC UTILITY COMMISSION
ON
NOTICE OF PROPOSED RULEMAKING

Adopted: December 9, 2005 **Released: December 9, 2005**

The Public Utility Commission of Oregon ("Oregon Commission") welcomes this opportunity to comment on issues raised by the decision of the United States Court of Appeals for the Tenth Circuit in *Qwest Corp. v. FCC* ("Qwest II").[1]

Summary

Universal Service Principles

- The Qwest II remand requires a careful reformulation of the Federal Communications Commission's ("FCC") universal service program to reflect a balancing of the principles established by Congress. Three services should be supported:
  - traditional circuit-switched telephone service;
  - wireless, mobile voice service;
  - broadband access to the internet.
- Telecommunications networks that receive universal service funds should be required to offer broadband universally in the areas where they receive support.
- Priorities may need to be established among supported services in order to avoid overburdening consumers.
- Wireless services should be an important component of a reformulated universal service program.
- Competitive neutrality must be maintained while controlling program costs.

[1] Qwest Corp. v. FCC, 398 F.3d 1222 (10th Cir. 2005). The captioned Notice of Proposed Rulemaking will be referred to below as "NPRM."

- Congress mandated coordinated federal and state universal service programs. States have a very important statutory role that must be reflected in the FCC's universal service program.

Distribution Mechanisms

- There should not be separate universal service mechanisms for rural and non-rural carriers.
- The principles proposed by the NARUC Task Force on Intercarrier Compensation should be adopted by the FCC. [2]
- The State Allocation Mechanism ("SAM") is the appropriate unified universal service mechanism for all Eligible Telecommunications Carriers ("ETCs").
- The balancing of Congressional principles called for by the Tenth Circuit Court of Appeals can best be accomplished by making appropriate state allocations, accompanied by FCC guidelines for and review of state distributions to ETCs.

Collection Mechanisms

- Ultimately, universal service funds should be generated by a fee on connections. It may be appropriate to apply the fee just to telephone numbers for an interim period.
- As the FCC moves towards assessing a universal service fee on telephone numbers and/or connections to fund the federal universal service fund, states should be able to assess fees on numbers and/or connections as well to support their own universal service efforts.

Universal Service Principles

The Qwest II remand requires a careful reformulation of the FCC's universal service program to reflect a balancing of the principles established by Congress.

The 10th Circuit Court of Appeals made clear in Qwest II that the FCC must complete a fundamental reformulation of the universal service program based on careful implementation of Congressional principles:[3]

> We hold that the FCC relied on an erroneous, or incomplete, construction of 47 U.S.C. § 254 in defining statutory terms and crafting the funding mechanism for non-rural, high-cost support.

---

[2] These principles are part of the comprehensive plan of the National Association of Regulatory Utility Commissioners ("NARUC") Task Force on Intercarrier Compensation that is referenced in paragraph 29 of the NPRM ("NARUC Task Force Plan"). The NARUC Task Force Plan is available at: http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6517610400.

[3] 398 F.3d at 1226.

> That construction of the statute is fatal to the cost support mechanism at issue in this case.

The court unequivocally rejected exclusive focus on reasonable comparability:[4]

> [T]he principle of "reasonable comparability" is but one of seven principles identified by Congress to guide the Commission in drafting policies to preserve and advance universal service. See 47 U.S.C. § 254(b). For instance, Congress also intended that "[q]uality services should be available at just, reasonable, and affordable rates." Id. § 254(b)(1). As we noted in Qwest I, "[t]he plain text of the statute mandates that the FCC 'shall' base its universal policies on the principles listed in § 254(b)." 258 F.3d at 1200. Under the Act, the FCC's duty is mandatory. Id. However, we posited that while "the FCC must base its policies on the principles, . . . any particular principle can be trumped in the appropriate case. . . . [T]he FCC may exercise its discretion to balance the principles against one another when they conflict, but may not depart from them altogether to achieve some other goal." Id.

The seven principles established by Congress in §254(b) to guide universal service policy are:

1. quality services available at just, reasonable, and affordable rates;
2. access to advanced services in all regions;
3. low-income consumers and those in rural, insular, and high cost areas should have access to services that are reasonably comparable to those services provided in urban areas at rates that are reasonably comparable;
4. all providers should make equitable and non-discriminatory contributions;
5. specific, predictable and sufficient federal and state mechanisms to preserve and advance universal service;
6. access to advanced services for schools, healthcare providers, and libraries;
7. additional principles determined by the Joint Board and FCC (The FCC has established competitive neutrality as an additional principle pursuant to this provision.[5]).

---

[4] 398 F.3d at 1234.

[5] NPRM at 17. The NARUC Task Force Plan referenced in n. 2 suggests universal service principles for adoption by the FCC at page 7.

The policy chosen must balance these principles when they conflict, but a place to start is by asking what services should be universally available in the absence of other offsetting considerations. Three services qualify under the Congressional standards:

1. traditional circuit-switched telephone service;
2. wireless, mobile voice service;
3. broadband access to the internet.

These basic and advanced services are generally available in urban areas and widely subscribed to. If the Commission is serious about *advancing* universal service, it must address the universal availability of all three.

The Congressional principles also require that these services be available at just, reasonable, and affordable rates and that the rates be reasonably comparable to urban rates. While our observation should be confirmed by a survey, it appears that rates for wireless, mobile voice service and broadband access to the internet are priced the same or nearly the same in all areas through the operation of the marketplace. The services are increasingly affordable and the service offerings increasingly attractive. The universal service issue for these services appears to be availability, not price. The universal service program for these services should therefore concentrate on extending the coverage of wireless, mobile voice service and broadband access to the internet.

Telephone service, on the other hand, is universally available but at rates that are a crazy-quilt of regulatory ratemaking. Rural rates can be higher than or lower than urban rates. Carriers are subsidized through myriad high cost mechanisms that lack coherence and consistency and that have no direct relation to rates. For voice telephone service, a reformulated program should focus on assuring consumer rates that are just, reasonable, affordable, and reasonably comparable to urban rates.

Telecommunications networks that receive universal service funds should be required to offer broadband universally in the areas where they receive support.

Modern telephone networks are engineered so that DSL service can be provided as well as telephone service. Similarly, modern cable networks are engineered to provide cable modem service and not just traditional cable television service. Finally, digital wireless networks include substantial portions of the infrastructure that is required to provide third generation broadband data services. As a result, the current universal service programs provide substantial implicit support for broadband access to the internet. As technology has evolved and wireless services have become widely available, it

no longer makes sense to incur the investment associated with any telecommunications network, wireless or wireline, strictly to provide basic voice service. The Oregon Commission recommends that universal service programs only support networks that also provide universal broadband internet access.[6]

Priorities may need to be established among supported services in order to avoid overburdening consumers.

Universal service support for traditional circuit-switched telephone service, wireless mobile voice service and broadband access to the internet follows directly from the Congressional principles, but unfortunately, the analysis cannot stop there. This is a very ambitious universal service program that may not be affordable, indeed is probably not affordable if attempted all at once. It is, after all, consumers who will ultimately provide universal service support, so every dollar spent in furtherance of universal service goals is a dollar that must be obtained from another consumer. Universal service contributions impact affordability and could easily price some consumers out of the market. This is the prime example of what the court meant when it said that "any particular principle can be trumped in the appropriate case. . . ."

The objective of making all three services universally available must be balanced against the cost of the program. Priorities may need to be established. If so, the Oregon Commission recommends that the services be supported in the order that they are listed above, which correspond to their market penetration. This criteria reflects §254(c)(1)(B), which directs that in defining supported services, consideration be given to the extent to which such services "have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers(.)" An affordable level of funding should be determined. Funds should first be allocated to a network capable of both voice service and broadband access to the internet. Remaining funds should be allocated to mobile wireless mobile voice service.[7]

Wireless services should be an important component of a reformulated universal service program.

The second priority for universal service funding should be the extension of mobile, wireless networks into rural areas. This is clearly required by the

---

[6] As this involves a significant change from existing policy, the Oregon Commission would not object to a transition period, three years perhaps. As is currently the case with telephone service, exceptions to a universal service policy for broadband should be permitted where the cost is prohibitive or special circumstances exist.

[7] If a wireless network is capable of providing all three services throughout a service area, it should be considered for "first priority" funding.

Congressional principles and wireless services meet all of the criteria for supported services contained in §254(c)(1). Wireless services can be particularly beneficial in rural areas because people are often away from a place where they have access to a landline phone.

Although somewhat oversimplified, extending wireless service in rural areas is primarily a matter of constructing additional cell sites and establishing backhaul to the wireless network. While the cost of the basic equipment for small rural cell sites is quite modest and relatively uniform, costs for real estate, site access, power, towers, backhaul, etc. can vary considerably. This means that the universal service program can focus on construction of additional cell sites in rural areas.

Universal wireless access will not be completed in a single year, particularly with the many demands on the universal service fund. Nevertheless, it is most important that the goal be established and that measurable progress toward it occurs. Experience with the program will allow the Commission to better assess how much support is required.

Competitive neutrality must be maintained while controlling program costs.

As noted, the FCC has established a seventh principle, competitive neutrality.[8] This is a difficult principle to realize in practice, as is obvious from experience over the last decade. One approach is to grant most applications for eligible telecommunications carrier status and provide funding to ETCs on a per subscriber basis. Something close to this happens today. The decision by a state commission to authorize additional ETCs results in costs which are imposed primarily in other states. The result has been a rapid increase in the size of the fund and a distribution of benefits across states that is hard to justify in terms of the Congressional principles. Attachment A shows that Alaska, Kansas, Mississippi, Puerto Rico and Wisconsin receive nearly one-third of all the support given to competitive ETCs in the entire nation. Puerto Rico receives more support for competitive ETCs than for the incumbent, although the incumbent is also one of the largest competitive ETCs. There is no public policy justification for this distribution of high cost funds to competitive ETCs.[9]

Another difficulty with providing per line support to competitive ETCs is that consumers are increasingly subscribing to multiple services, so a new subscription does not displace an existing one. The best example is mobile

[8] The NARUC Task Force Plan referenced in n. 2 expands this idea to include technological neutrality and cost effectiveness. See principle 1 on page 7 of the plan.
[9] This is not to say that there aren't special circumstances in Alaska that result in higher costs.

wireless service, where only a small fraction of new subscribers drop their wireline service entirely. Efforts to address this problem, such as the primary connection concept, have generated intense opposition.

There are several theoretical solutions that have been identified. One is a consumer voucher system, where every consumer in a high cost area would be given a voucher for supported services and the competitive market would be relied upon to bring forth the required services. This is similar to the primary connection concept, which was so universally opposed. Many observers are dubious about vouchers because telecommunications networks are characterized by fixed costs that don't vary significantly with the number of consumers served. An alternative is "reverse auctions." Under a reverse auction approach, the FCC or state commission would seek bids to provide universal service for some period of time like ten years, subject to specific contractual standards designed to ensure satisfaction of the Congressional principles. The low bidder would be chosen and a contract executed. This is theoretically very attractive because it reconciles competitive neutrality with support for a single network, or given the multiple supported services described above, a single wireline network and a single wireless network. Unfortunately, despite its theoretical attractiveness, reverse auctions are generally thought to be impractical.

In light of these concerns with the theoretically attractive options, what can be done to reconcile the desire to maintain competitive neutrality with the desire to control the growth in the size of the fund? As already described, the universal service program needs to support a minimum of two networks, a wireline telephone/broadband access network and a mobile wireless network, although it could be that both networks are provided by the same company.

Take the wireline network first. Realistically, the candidates are usually the cable company and the telephone company.[10] The telephone company is normally the incumbent, and so has a universal network in place. If the cable company wants to build out its network to achieve comparable reach, it should be given an opportunity to displace the incumbent. If not, only the incumbent should be supported.

Take the case now, of mobile wireless service. Every provider should be given an opportunity to compete for the contract to provide service to a previously unserved area. This could be the incumbent local exchange carrier, an incumbent wireless carrier or a new entrant. Once chosen, a provider should be held contractually to a set of build-out and performance standards.

[10] This simplification ignores the case where another ETC has overbuilt the network of an incumbent ETC.

Periodically, other carriers should be given an opportunity to displace the supported mobile wireless service.

Congress mandated coordinated federal and state universal service programs. States have a very important statutory role that must be reflected in the FCC's universal service program.

The universal service program recommended below involves a substantial role for the states. This role follows directly from the Congressional principles, which call for specific, predictable and sufficient federal and state mechanisms to preserve and advance universal service. As the court noted,[11]

> [T]he Act "plainly contemplates a partnership between the federal and state governments to support universal service." 258 F.3d at 1203. The terms of the Act evidence recognition of concurrent state authority. . .

A central question in this proceeding is how that partnership is to be structured. Concurrent federal and state programs must be integrated if they are to fulfill the Congressional principles. Giving the states a substantial role in the findings of fact as regards the amount of support required by particular ETCs, subject to FCC guidelines and review, is the best way to accomplish this integration.

Congress established quality service as a principle. This principle is best addressed by an ongoing program to condition universal service support on the provision of quality services by the supported carrier. State commissions have traditionally monitored the service quality of telephone companies and are the most logical choice to monitor the service quality of ETCs on an ongoing basis. This fits nicely with the consumer protection responsibilities that states have traditionally assumed.

A reformulated universal service program as described here would fully reflect Congressional principles and would therefore be most likely to withstand judicial review. We turn now to a discussion of the mechanics for implementing such an approach.

Distribution Mechanisms

[11] 398 F.3d at 1232.

There should not be separate universal service mechanisms for rural and non-rural carriers.

In this docket, there are currently two separate proceedings addressing universal service issues. The Commission has referred the rural carrier mechanism to the Universal Service Joint Board for a recommended decision. This proceeding addresses the non-rural carrier mechanism. There is nothing in the Congressional principles described in detail above to suggest that Congress intended that there be separate mechanisms for rural and non-rural carriers. The principles address low-income **consumers** and **consumers** in rural, insular, and high cost areas with no reference to any of the characteristics of the ETCs serving them. Congress defined rural telephone company in §3(37) and used the term in several places in the Act when it wanted to distinguish these companies in some way. The term is not used in §254 because Congress did not intend that there would be separate mechanisms for rural and non-rural companies. As the Qwest II Court observed in another context:[12]

> Generally, when Congress includes a specific term in one provision of a statute, but excludes it in another, it is presumed that the term does not govern the sections in which it is omitted. United States v. Atandi, 376 F.3d 1186, 1188 (10th Cir. 2004) (citing Russello v. United States, 464 U.S. 16, 23 (1983)). We see no reason to disturb this cannon (sic) of statutory construction here.

Separate mechanisms are often justified based on an alleged "rural difference," illustrated by quantitative comparisons between rural companies and non-rural companies, but this is an invalid comparison. The correct comparison is between the rural areas of rural companies and the rural areas of non-rural companies. The comparison would show the rural areas to be very similar. The real "rural difference" is between rural areas and non-rural areas, not between rural companies and non-rural companies.

The separate and unequal universal service mechanisms for rural and non-rural carriers produce results which are plainly at odds with Congressional intent. Consider the hypothetical example of two states that are identical in all respects save one: the first state is served entirely by a non-rural carrier while the rural territory in the second state is partially served by rural carriers, with the remainder served by a non-rural carrier. Suppose further that neither non-rural carrier receives federal universal service support, but the rural carriers do receive support. The result is that, even though the states are identical, the second state receives support while the first does not.

---

[12] 398 F.3d at 1232.

This comes about solely as a result of the corporate ownership pattern of the rural territories. This is doubtless one of the explanations for the distribution of high cost funds to incumbents shown in Attachment A.

The justification for this result that is often offered is that the non-rural company can afford to cross-subsidize its higher cost rural exchanges by raising its prices in its other exchanges while the rural carriers have no such opportunity. This justification ignores the fact that the non-rural carrier is likely unable to maintain such a cross-subsidy due to the existence of competitive alternatives in the lower cost exchanges. As the Court observed:[13]

> With the advent of competition, Congress feared that carriers entering the market would compete aggressively for low-cost, urban areas, leaving former monopoly carriers the unsustainable burden of providing service to rural areas in the face of a dwindling urban base.

In other words, Congress enacted §254 because it believed that internal cross-subsidization would no longer suffice to ensure universal service. It is illogical therefore to base policy implementing §254 on precisely the assumption Congress rejected.

It is common for policy-makers to observe that rural companies do a much better job of serving their rural customers than do the non-rural companies. Holding companies that purchase rural exchanges from non-rural companies often seek additional funding to upgrade the acquired exchanges because, they say, the acquired exchanges are in poor condition. This result is a predictable result of the different economic incentives that the Commission has given the carriers through the bifurcated universal service program. Simply stated, it is profitable for the rural carriers to invest in their rural exchanges and it is not profitable for the non-rural carrier to invest in its rural exchanges. The reduced level of investment in rural exchanges owned by non-rural carriers results in lower quality and in lesser availability of advanced services such as DSL, plainly a violation of the Congressional principles. Ultimately, it is the rural customers of non-rural companies who suffer from this discriminatory treatment. They can rightly claim that they are not receiving what Congress determined they are entitled to.

Private companies are answerable to their shareowners and are legitimately focused on maximizing profitability. This is true of both rural companies and non-rural companies; neither is inherently more or less altruistic. The different results in rural and non-rural company territories are a direct result

[13] 398 F.3d at 1226.

of the different incentives offered by the separate but unequal universal service mechanisms.

The principles proposed by the NARUC Task Force on Intercarrier Compensation should be adopted by the FCC.

The FCC seeks comments on the universal service aspects of the NARUC Task Force Plan. The Oregon Commission supports the principles recommended by the NARUC Task Force.[14] As already noted, these principles supplement the principles established by Congress and are wholly compatible with the letter and the spirit of the Communications Act. They are implicit in the discussion above.

The NARUC Task Force Plan proposed the concept of a State Allocation Mechanism or SAM. It represents an attempt to establish coordinated federal and state universal service mechanisms called for the Communications Act. The Oregon Commission continues to support the adoption of a SAM.

Since the NARUC Task Force Plan was submitted in May 2005, discussion and debate has continued. Although the principles contained in the NARUC Task Force Plan remain as valid today as they were last May, specific aspects of the plan have evolved. Although the NARUC Task Force has not put forward a revised proposal, several revised proposals have been put forward by members and staff of the Task Force.

The State Allocation Mechanism is the appropriate unified universal service mechanism for all ETCs.

Oregon Commissioner Ray Baum has proffered a plan for a unified universal service mechanism in the Joint Board Proceeding based on the NARUC Task Force Plan called the State Allocation Mechanism.[15] That proposal is incorporated herein by reference.

The full detail of the plan, including the detailed implementation timeline, will not be repeated here. In brief, the SAM proposal calls for the FCC to make an allocation of total universal service funds to accounts at the Universal Service Administrative Company ("USAC") for the benefit of each state. The state allocations would be determined after the USF is re-sized to reflect increases due to access charge reductions and increases in support to

---

[14] The principles appear on pages 7-8 of the NARUC Task Force Plan.

[15] Public Notice, Federal-State Joint Board On Universal Service Seeks Comment on Proposals to Modify The Commissions Rules Relating to High-Cost Universal Service Support, CC Docket No. 96-45, FCC 05J-1, Released August 17, 2005, Appendix A. See also, the comments of the Oregon Commission filed September 30, 2005 and its reply comments filed October 31, 2005 in response to the Public Notice.

rural areas served by non-rural companies. These allocations would be subject to periodic FCC review and would be increased by an annual factor to be determined by the FCC.

State commissions would then be responsible for determining the distribution of these funds to individual ETCs. The FCC would act in the place of states that do not act. Participating states would be subject to FCC guidelines, and their decisions would be subject to FCC review for conformance with the guidelines. These guidelines and the review process would ensure that the SAM approach would not be an impermissible delegation of authority to the states.

The SAM approach is fully compliant with the Congressional universal service principles in ways that the current approach is not. We discuss each principle in turn:

1. **quality services available at just, reasonable, and affordable rates** In the case of traditional telephone service, the FCC should establish a variable rate benchmark that depends on household income. The states should be required to certify that the distribution of federal universal service support, together with rate rebalancing and/or funding from a state universal service program, is sufficient to ensure that the rate benchmark will be met. The FCC could also establish benchmarks for mobile wireless service and broadband access to the internet, although we believe it would be sufficient for the state to certify that rates in rural and high cost areas are no higher than those in urban portions of the state. States would also certify that ETCs are providing quality services;

2. **access to advanced services in all regions** As a part of an annual certification filing, states should be required to describe the availability of wireless, mobile services and broadband access to the internet in all regions of their states. For those regions that lack one or both of these services, a requirement would exist to provide a plan for making advanced services available over a reasonable period of time;

3. **low-income consumers and those in rural, insular, and high cost areas should have access to services that are reasonably comparable to those services provided in urban areas at rates that are reasonably comparable** The SAM approach envisions that an allocation of low income funds would be made to each state, based on the number of low income households. The state would be responsible for developing a plan to ensure that low income consumers have access to reasonably comparable services at affordable rates (lower than rates paid by other

consumers after consideration of the support received) and would report annually on the performance of its program. The availability of reasonably comparable services at reasonably comparable rates in rural, high cost, and insular areas was discussed under 1. above;

4. **all providers should make equitable and non-discriminatory contributions [not applicable to the current discussion];**

5. **specific, predictable and sufficient federal and state mechanisms to preserve and advance universal service** One of the great virtues of the SAM proposal is that it provides a way to integrate federal and state programs in a way that ensures support will be specific, predictable, and sufficient. Each participating state would submit a long term plan detailing how the federal allocation plus the state mechanism combined work to achieve the Congressional purpose;

6. **access to advanced services for schools, healthcare providers, and libraries [not applicable to the current discussion];**

7. **competitive neutrality** This subject was discussed extensively above. Every applicant for ETC status cannot be supported if the program is to be kept affordable. Competitive neutrality would be observed by giving all carriers a fair opportunity to become either the supported wireline or supported wireless network in any particular area. In limited circumstances, only one provider should be supported but be required to provide all supported services.

As already discussed, the Communications Act requires coordinated federal and state programs to maintain and advance universal service. The SAM approach is an effective way to bring about this coordinated support. The state would receive an allocation of federal support and would have to rebalance rates and/or provide state support sufficient to satisfy the FCC's guidelines. The inducement to the state to provide support is that it would lose its federal allocation if it does not do so. The Qwest II Court addressed the issue of adequate incentives for the states in a portion of its order that upheld the FCC's decision:[16]

> [T]he FCC has drafted a requirement into its support mechanism for non-rural carriers requiring states to certify that rural rates within their boundaries are reasonably comparable. If they are not, the states must develop and present an action plan to the FCC indicating the state's response. If the state fails to do so, federal funds will be withheld. The Petitioners assert

[16] 398 F.3d at 1238.

> that the certification process constitutes an inadequate inducement. We disagree.
>
> We are satisfied that the inducement mechanism contained in the Order on Remand adequately responds to the concerns we expressed in Qwest I. The mechanism requires a careful yearly review, and the prospect of withheld funds will certainly bring pressure to bear on the states. Petitioners have failed to proffer any evidence to suggest that the Commission's inducement mechanism will prove inadequate. As with any such mechanism, experience may indeed prove the best judge of its efficacy.

We agree. Experience with the SAM will prove to be the best judge of its efficacy as an inducement mechanism. At this point, there is no reason to assume that additional state inducements will be necessary.

The great advantage of taking a combined look at the impact of federal and state programs is that it is the only way to directly assure that Congressional principles are being satisfied.

The balancing of Congressional principles called for by the Tenth Circuit Court of Appeals can best be accomplished via the SAM approach, accompanied by FCC guidelines for and review of state distributions to ETCs.

The Qwest II Court clearly understood that the FCC would have to make tradeoffs in achieving a balance among the Congressional principles; indeed, it even recognized that a Congressional principle could be "trumped" under some circumstances.

What are these tradeoffs? Essentially, they are between affordability on the one hand and scope of advanced services supported and competitive neutrality on the other. Obviously, the more services supported and the more competitive networks funded, the more expensive is the program. The Oregon Commission recommends that two networks be supported in any given geographic area: a wireline telephone/broadband access network and a wireless mobile network.[17] All companies should be given an equal opportunity to be designated in any particular area. Incumbent wireless and wireline carriers have certain advantages and certain disadvantages, but this is a common occurrence in competitive markets and does not detract from competitive neutrality.

[17] As pointed out in n. 7, exceptions to a universal service policy for any supported service should be permitted where the cost is prohibitive or special circumstances exist.

There is no need to "trump" either the access to advanced services or the competitive neutrality principle, but balancing these principles with the affordability principle imposes some limits on how those principles are achieved. As an example, universal availability of mobile wireless service will likely have to be achieved over a period of years.

If the SAM approach is adopted, the FCC will, for the first time, have the opportunity to control the size and growth of the federal fund directly. If a state designates an additional ETC, the state will know that any distribution of funds to the new ETC will come out of its allocation of federal funds, and so will have an incentive to balance the costs and benefits of the designation. By establishing a mandatory variable federal benchmark rate for basic telephone service, the FCC will know with certainty that the rates for this service are just, reasonable, reasonably comparable and affordable. By requiring states to maintain programs to monitor service quality, the FCC will know that the Congressional principle requiring quality service is being met. By requiring states to report on the availability of supported services in all regions of their states, the FCC will have first-hand knowledge that universal service goals are being met.

The FCC will not get the state allocations exactly right the first time, just as payments to ETCs are not exactly right currently. The extensive reporting that will take place by the states will let the FCC clearly understand the impact of more or less funding in total or for particular states. Over time, this built-in feedback mechanism will allow the universal service program to do a much better job of balancing Congressional principles.

Collection Mechanisms

Ultimately, universal service funds should be generated by a fee on connections. It may be appropriate to apply the fee just to telephone numbers for an interim period.

It is generally recognized that interstate telecommunications revenues are not a viable base for generating universal service contributions in the future. It is becoming impossible to untangle the jurisdictional components of the service packages that are desired by consumers. Further, services that are not considered telecommunications are increasingly direct substitutes for telecommunications services.

The two candidates most often mentioned as replacements are telephone numbers and network connections. There is more support for telephone numbers because they relate more straightforwardly to the public switched

telephone network. The Oregon Commission believes that telephone numbers may initially be a satisfactory base for assessing universal service contributions but that, ultimately, telephone numbers will not be adequate. Multi-line customers have readily available techniques for reducing the amount of telephone numbers they use. Even more significant, alternatives to traditional telephone numbers will proliferate rapidly and it will be very difficult for the FCC to keep up. If the entire burden of funding universal service falls on telephone numbers, businesses will have a strong incentive to devise alternatives to their use, even if they are inefficient.[18]

In the long run, connections will prove to be a more stable and equitable base for universal service funding. The Oregon Commission does not object, however, to basing universal service contributions solely on telephone numbers for an interim period while a connections based approach is developed and vetted.

As the FCC moves towards assessing a universal service fee on telephone numbers and/or connections to fund the federal universal service fund, states should be able to assess fees on numbers and/or connections as well to support their own universal service efforts.

States face the same problems that the FCC faces with maintaining jurisdictional revenues as a basis for state universal service contributions. As noted above, the Congressional universal service principles require sufficient and predictable state programs. In order to accomplish this, states must be in a position to have a stable contribution base. For the reasons already explained, the Oregon Commission believes that state universal service funding will eventually have to be based on telephone numbers and connections. The FCC's decision should explicitly recognize the right of states to do so. A clear FCC statement would greatly facilitate the process of changing state law in states like Oregon where it would be required.

[18] The NARUC Task Force Plan referenced in n. 2 supports this approach as well.

Attachment A
2006 Projected HCF Support

	Incumbent	CETC	Grand Total
AK	$99,247,788	$50,332,464	$149,580,252
AL	$106,150,377	$26,712,511	$132,862,888
AR	$105,930,840	$36,696,264	$142,627,104
AS	$1,558,008	$0	$1,558,008
AZ	$67,927,320	$16,104,648	$84,031,968
CA	$107,028,408	$975,864	$108,004,272
CO	$71,342,736	$8,641,332	$79,984,068
CT	$2,252,772	$0	$2,252,772
DC	$0	$0	$0
DE	$254,832	$0	$254,832
FL	$77,150,988	$26,511,072	$103,662,060
GA	$98,339,160	$8,410,644	$106,749,804
GU	$7,688,664	$7,218,984	$14,907,648
HI	$21,636,084	$18,533,880	$40,169,964
IA	$61,378,992	$44,734,596	$106,113,588
ID	$53,516,556	$1,111,824	$54,628,380
IL	$66,687,084	$11,509,476	$78,196,560
IN	$57,414,624	$5,130,540	$62,545,164
KS	$129,701,952	$56,562,048	$186,264,000
KY	$76,118,705	$25,789,712	$101,908,417
LA	$85,132,308	$39,456,528	$124,588,836
MA	$2,766,468	$0	$2,766,468
MD	$4,399,728	$2,160	$4,401,888
ME	$25,663,478	$11,103,625	$36,767,102
MI	$44,794,668	$14,656,140	$59,450,808
MN	$83,435,184	$43,907,748	$127,342,932
MO	$87,301,416	$10,059,588	$97,361,004
MP	$812,952	$270,720	$1,083,672
MS	$145,380,931	$70,430,323	$215,811,255
MT	$69,175,693	$15,815,800	$84,991,493
NC	$77,961,876	$10,548,672	$88,510,548
ND	$42,200,172	$36,809,496	$79,009,668
NE	$54,491,003	$3,052,050	$57,543,053
NH	$9,664,056	$1,989,348	$11,653,404
NJ	$1,180,188	$0	$1,180,188
NM	$48,049,824	$12,870,984	$60,920,808
NV	$25,740,252	$12,180,420	$37,920,672
NY	$49,007,088	$7,061,292	$56,068,380
OH	$38,483,856	$1,007,760	$39,491,616
OK	$108,728,280	$19,461,888	$128,190,168
OR	$64,762,848	$10,352,604	$75,115,452
PA	$70,509,276	$4,196,772	$74,706,048
PR	$46,949,808	$62,535,804	$109,485,612

RI	$38,988	$0	$38,988
SC	$83,149,848	$4,429,932	$87,579,780
SD	$55,740,894	$28,340,025	$84,080,919
TN	$52,581,312	$3,074,292	$55,655,604
TX	$203,996,868	$18,344,148	$222,341,016
UT	$23,497,440	$244,296	$23,741,736
VA	$67,696,116	$19,204,272	$86,900,388
VI	$25,273,848	$1,061,232	$26,335,080
VT	$25,462,280	$6,040,416	$31,502,696
WA	$63,036,012	$35,212,260	$98,248,272
WI	$88,102,884	$52,847,640	$140,950,524
WV	$60,693,123	$8,839,268	$69,532,390
WY	$38,957,561	$16,306,732	$55,264,292
	$3,186,144,416	$926,690,093	$4,112,834,509

Source: Derived from USAC's 1st Quarter 2006 HC01 Appendix